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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/784,579	02/23/2004	David Angus Grant Jenkinson	SOMMR-012US	9576
7663                      7590                      01/13/2009 STETINA BRUNDA GARRED & BRUCKER 75 ENTERPRISE, SUITE 250 ALISO VIEJO, CA 92656				
EXAMINER				
FEENEY, BRETT A				
ART UNIT		PAPER NUMBER		
4114				
MAIL DATE		DELIVERY MODE		
01/13/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary****Application No.**

10/784,579

**Applicant(s)**JENKINSON, DAVID ANGUS  
GRANT**Examiner**

BRETT FEENEY

**Art Unit**

4114

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02/23/2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-29 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02/23/2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☒ Certified copies of the priority documents have been received in Application No. 10/784579.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

#### **DETAILED ACTION**

##### **Status of the Claims**

1. The following action is in response to application 10/784579 received on 23 February 2004.
2. The following action is a restriction requirement and does not constitute a first action on the merits.
3. Claims 1 – 29 are currently pending.

##### **Election/Restrictions**

4. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1 – 7 and 9 – 16, drawn to a method for assigning marketing metrics, claims 27 – 29, drawn to marketing metric software, claims 25 – 26, drawn to marketing metric computer, classified in class 705, subclass 10.
  - II. Claims 8 and 17 – 20, drawn to a multi-armed marking apparatus, classified in class 101, subclass 4.
  - III. Claims 21 – 22, drawn to a printed article, classified in class 283, subclass 40.
  - IV. Claims 23 – 24, drawn to a computer, classified in class 345, subclass 440.

The inventions are distinct, each from the other because of the following reasons:

5. Restriction for examination purposes as indicated is proper because all these inventions listed in this action are independent or distinct for the reasons given above and there would be a serious search and examination burden if restriction were not required because one or more of the following reasons apply:
  - (a) the inventions have acquired a separate status in the art in view of their different classification;
  - (b) the inventions have acquired a separate status in the art due to their recognized divergent subject matter;

- (c) the inventions require a different field of search (for example, searching different classes/subclasses or electronic resources, or employing different search queries);
- (d) the prior art applicable to one invention would not likely be applicable to another invention;
- (e) the inventions are likely to raise different non-prior art issues under 35 U.S.C. 101 and/or 35 U.S.C. 112, first paragraph.

**Applicant is advised that the reply to this requirement to be complete must include (i) an election of a invention to be examined even though the requirement may be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.**

The election of an invention may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse. Traversal must be presented at the time of election in order to be considered timely. Failure to timely traverse the requirement will result in the loss of right to petition under 37 CFR 1.144. If claims are added after the election, applicant must indicate which of these claims are readable on the elected invention.

If claims are added after the election, applicant must indicate which of these claims are readable upon the elected invention.

Should applicant traverse on the ground that the inventions are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

6. Inventions I and IV are directed to related inventions. The related inventions are distinct if: (1) the inventions as claimed are either not capable of use together or can have a materially different design, mode of operation, function, or effect; (2) the inventions do not overlap in scope, i.e., are mutually exclusive; and (3) the inventions as claimed are not obvious variants. See MPEP §

806.05(j)). In the instant case, the inventions as claimed can be used separately and are therefore mutually exclusive. Furthermore, the inventions as claimed do not encompass overlapping subject matter and there is nothing of record to show them to be obvious variants. Invention IV, as claimed is a generic graphing computer that may be used for a wide array of tasks including processing data; displaying graphics for inputted data, calculations and the like; or simply used to accept an input, process the input, and then produce an output. Invention I is directed to marketing metric methods, marketing metric software, and marketing metric programmed computer. The two inventions are capable of being used separately without infringing on each respective invention. Further, Inventions I and IV are capable of being used without inventions II and III, which are apparatuses directed to a multi-arm marking apparatus and a printed article, respectively.

7. Inventions I and IV, II and III are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different designs, modes of operation, and effects (MPEP § 802.01 and § 806.06). In the instant case, the different Inventions I (marketing metric system, software and method), II (multi-armed marking apparatus), III (printed article), and IV (computer); are patentably distinct. As discussed above, Inventions I and IV have separate utilities as a marketing metric system/method and general use graphing computer, respectively. Invention III is drawn to a printed article. Invention II has separate utility as it may be used to display status information or used as an ornamental three dimensional graphic. Invention III can be used to display picture, drawings, information and the like, may be ornamental in nature, or may be used to disseminate information to others. Invention II is drawn to a multi-armed marking apparatus. As, claimed Inventions I, II, III and IV are patentably distinct inventions, with separate utilities.

Any inquiry of a general nature or relating to the status of this application or concerning this communication or earlier communications from the Examiner should be directed to **Brett Feeney** whose telephone number is **571.270.5434**. The Examiner can normally be reached on Monday-Friday, 7:45am-5:15pm. If attempts to reach the examiner by telephone are unsuccessful, the Examiner's supervisor, **JAMES A. REAGAN** can be reached at **571.272.6710**.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://portal.uspto.gov/external/portal/pair> . Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at **866.217.9197** (toll-free).

Any response to this action should be mailed to:

*Commissioner of Patents and Trademarks*

**Washington, D.C. 20231**

or faxed to **571-273-8300**.

Hand delivered responses should be brought to the **United States Patent and Trademark Office Customer Service Window**:

Randolph Building  
401 Dulany Street  
Alexandria, VA 22314.

22 December 2008

/BRETT FEENEY/

Examiner, Art Unit 4114

/James A. Reagan/ Supervisory Patent Examiner, Art Unit 4114